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Before the
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street, N.W.
Washington, D.C. 20554

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In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In South Carolina	CC Dkt No. 97-208 DA 97-2112

COMMENTS OF THE SOUTH CAROLINA CABLE TELEVISION ASSOCIATION

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Its Attorney

Dated: October 20, 1997

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COMMENTS OF THE SOUTH CAROLINA CABLE TELEVISION ASSOCIATION

I. Introduction and Summary.

The South Carolina Cable Television Association ("SCCTA") respectfully submits these comments regarding the application of BellSouth Telecommunications, Inc. ("BellSouth")[1] to provide in-region, interLATA services in South Carolina. The SCCTA opposes BellSouth's application for two reasons.[2]

First, BellSouth cannot proceed under "Track B" as it proposes to do. It admits that it has numerous interconnection agreements with potential competitors, including facilities-based competitors. This would on its face require BellSouth to use "Track A." Nevertheless, BellSouth claims that "Track B" is available because the competitors with whom it has interconnection agreements are not pursuing market entry with sufficient vigor.

Congress anticipated this problem and gave BellSouth a solution. BellSouth could have negotiated for schedules that would have required new competitors to begin operations

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1 "BellSouth" also refers to BellSouth Corporation, BellSouth Long Distance, Inc., and any other BellSouth affiliate that would receive authority to provide interLATA service.

2 The SCCTA believes that BellSouth's application is defective for reasons beyond those discussed in this pleading. In light of the fact, however, that other parties are likely to delve into such defects at some length, the SCCTA limits its comments to the two matters discussed herein.

within a particular time. If a competitor would not agree to a schedule, BellSouth could have arbitrated that issue and had a schedule imposed by the state commission. And if the competitor failed to abide by the schedule, that would have permitted BellSouth to proceed under Track B, which is available if the state commission certifies that competitors have "fail[ed] to comply, within a reasonable period of time, with the implementation schedule contained in such agreement."[3] BellSouth has not alleged that any potential competitors has failed to comply with a firm schedule — and the state commission has certainly not "certified" that this is the case. As a result, Track B is unavailable to BellSouth as a matter of law.

Second, BellSouth's supporting affidavits show that BellSouth has failed to comply with checklist item number thirteen (reciprocal compensation in accordance with section 252(d)(2)). BellSouth, like other incumbent LECs, has apparently concluded that the market for dial-up access to the Internet should be retained as a monopoly preserve for itself. Consequently, BellSouth has declared that it will not pay terminating compensation to competing LECs for calls its end users make to dial-up Internet Service Providers (ISPs) whose local exchange service is provided by a CLEC.

BellSouth's position is based on the simple, but mistaken claim that because communications between end users and the Internet are jurisdictionally interstate, calls from end users to ISPs cannot be "local" calls subject to compensation. This claim, however, flies in the face of repeated Commission rulings that ISPs are to be treated as end users — and calls to them treated as local calls — when they purchase dial-up connections to the public switched network. Moreover, if BellSouth's claim were to be sustained, it would mean that CLECs would never seek out ISPs as customers and, in fact, would have a strong financial incentive to shun them. This would permit BellSouth to monopolize the market for dial-up connections between ISPs and the public switched network. The Commission should specifically rule that no Section 271

[3] 47 U.S.C. §271(c)(1)(B).

application will be granted to any Bell company that refuses to pay terminating compensation to CLECs for local calls to ISPs served by those CLECs.

II. Track B Is Not Available To BellSouth Due To Lack Of Market Entry Unless Its New Competitors Are Failing To Comply With Binding Implementation Schedules.

Broadly speaking, Track B is available if a Bell company does not receive requests for access to unbundled elements and/or interconnection from potential competitors, but is unavailable if the Bell company receives such requests.[4] This reflects a strong congressional preference to keep the ban on Bell interLATA services in place until there is real evidence that the local exchange has been opened up to competition — evidence that a showing under Track A would provide.

Congress was aware that a group of potential local exchange competitors — the long distance companies — might be of two minds about entering a Bell company's local exchange market if a consequence of such entry is that the Bell company can enter the interLATA market. One possible form of "gamesmanship" that long distance companies might have undertaken was to hang back from seeking to enter the local exchange market at all. If they did so, and if no other competitors came forward, then the Bell company could have been trapped inside the LATA, simply because the long distance companies wanted to preserve their own markets. Track B ensures that a Bell company cannot be so constrained: if no one comes forward to seek local interconnection, then Track B, not Track A, applies.

A different form of gamesmanship would be for long distance carriers to seek interconnection agreements, obtain them, but then fail to enter the market. In this situation, the

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[4] *Compare* 47 U.S.C. § 271(c)(1)(A) (Track A applies when the Bell company "has entered into one or more binding agreements that have been approved under section 252") *with* 47 U.S.C § 271(c)(1)(B) (Track B applies if, as of three months before the Bell company's section 271 application, "no such provider has requested the access and interconnection described in subparagraph (A)").

long distance carriers could still protect their own markets, although at higher cost (since they would have to incur the costs of negotiating and arbitrating interconnection agreements). But Congress anticipated this possibility as well. Section 271(c)(1)(B) provides that:

> [A] Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have ... (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such an agreement.

A Bell company concerned about this kind of gamesmanship has an absolute right to obtain an agreement with an "implementation schedule" in it. If the other carrier will not agree to include one, then the Bell company can bring the matter to arbitration, and, once that arbitration is completed, Section 252(c)(3) ***requires*** the state commission to "provide a schedule for implementation of the terms and conditions by the parties to the agreement."[5] If the state commission issues an arbitration order without such a schedule, then the affected Bell company can pursue an appeal of the state commission's action, and, in light of the mandatory language of Section 252(c)(3), presumably secure a swift reversal.

The Commission addressed these questions in the *Oklahoma Order*.[6] There, the Commission specifically noted that "BOCs are free to negotiate implementation schedules for their interconnection agreements" and that "nothing in the Commission's rules precludes

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[5] Section 252(c) states that, "[i]n resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission ***shall***" take certain steps, including imposing an implementation schedule.

[6] Application of SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, *Memorandum Opinion and Order,* CC Dkt. No. 92-121, FCC No. 97-121 (released June 26, 1997) ("*Oklahoma Order*").

incumbent LECs from negotiating, or states from imposing in arbitration, schedules for the implementation of the terms and conditions by the parties to the agreement."[7] Moreover, the Commission held that the fact that Bell companies could negotiate for an implementation schedule, or have one imposed by arbitration, "provide BOCs a means of protecting themselves against any feared 'gamesmanship' on the part of potential competitors, such as the submission of sham requests intended solely to preclude BOC entry."[8] The Commission also relied upon the "implementation schedule" provision of Section 271(c)(1)(B) as a reason to reject Southwestern Bell's strained "post-dated request" theory of when Track B was foreclosed.[9]

Here, BellSouth presents itself as a helpless victim of circumstance: it "has done everything it reasonably can to facilitate local competition;"[10] yet, "[o]utside of the most obviously profitable cities and service categories, potential local competitors appear unwilling to seize the opportunities Congress, regulators and BellSouth have made available."[11] Thus, BellSouth states that it would be "futile and enormously costly to delay interLATA competition

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[7] *Oklahoma Order* at ¶ 37 n.109.

[8] *Oklahoma Order* at ¶ 58.

[9] *Oklahoma Order* at ¶ 37. The Commission also relied upon the "implementation schedule" provision in the *Michigan Order.* There, AT&T had claimed that a Bell company should not be deemed to be "providing" access and interconnection unless actual purchases were occurring. The Commission rejected this view, on the grounds that in general, Bell companies could not require interconnecting carriers to purchase particular unbundled elements or interconnection arrangements, ***unless*** such purchases were called for by an approved "implementation schedule." Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, *Memorandum Opinion and Order,* CC Dkt. No. 97-137, FCC No. 97-298 (released August 19, 1997) at ¶ 112.

[10] BellSouth Brief at ii.

[11] BellSouth Brief at i.

while waiting for facilities-based local competition to spread to both business and residential customers."[12]

BellSouth is not a victim of circumstance; it is a victim only of its own failed negotiation and arbitration strategy. It apparently chose not to negotiate implementation schedules in its agreements with competitors. Yet for Track B to be available, such schedules must not only exist; the state commission must certify that they have been violated. BellSouth's failure to insist upon firm schedules during negotiations and/or arbitration does not somehow oblige the Commission to ignore the requirements of Section 271 on the basis of some theory that insisting upon compliance would be "futile." Instead, it obliges the Commission to reject BellSouth's application.[13]

In this regard, BellSouth clearly recognized that establishing an implementation schedule for an agreement is, in general, a good idea. To take two examples, in its agreements with DeltaCom, Inc. and with ACSI,[14] Paragraph XVIII (of each agreement) states that, "within 30 days of the execution of this Agreement," the parties will "adopt a schedule for implementation of this Agreement." As far as the SCCTA is aware, however, no such schedule (which would be made an "addendum" to the original agreement) has ever been presented to the state commission even for review, much less for a "certification" that the interconnecting carrier has failed to comply with it, as required by Section 271(c)(1)(B)(ii).

One can easily imagine why BellSouth would have been hesitant, during negotiations, to insist upon a firm implementation schedule. If BellSouth had demanded a firm

[12] *Id.*

[13] For this reason, BellSouth's elaborate presentation of what it has done to ready itself for competition, as well as its economic analysis about how undesirable a market South Carolina is for real local exchange competition, are both totally beside the point.

[14] DeltaCom and ACSI are two carriers that BellSouth identifies as actually having undertaken some facilities-based competition. *See* BellSouth Brief at 13-14.

schedule, the most sensible response from the other side of the table would have been to demand in return that the starting date of any such schedule expressly reflect the time that certain items that are needed to actively compete are actually available. These items would logically include:

- Final prices for interconnection and unbundled elements.
- Fully functional Operations Support Systems.
- Permanent number portability at a reasonable price.
- Particularly in the case of competition for residential customers, a functioning, fairly administered, and competitively neutral mechanism to distribute universal service subsidies for loop costs, available not only to BellSouth, but also to the new competitor.

Most new competitors would reject a proposed binding implementation schedule that did not either (a) include firm dates when the items noted above would be available, or (b) tie the "start date" of the schedule to such future time as those items are available.

One can also easily imagine why BellSouth would have been hesitant to arbitrate the question of establishing a firm implementation schedule. An arbitration of this issue would inevitably focus on how long it would reasonably take a new competitor to enter the market in light of the actual impediments to such competition — including the unavailability of key items such as those noted above. Such an inquiry could easily have led to approval of an agreement with a specific, but protracted implementation schedule. This, obviously, would not have served BellSouth's interests, because it would highlight the fact that its potential competitors were ***not*** unreasonably delaying entry into the market. Moreover, including in the agreement a specification of the practical, real-world prerequisites to competition ***that were not yet in place*** would also not likely serve BellSouth's interests in a proceeding such as the one at hand. In these circumstances, BellSouth could reasonably conclude that the better part of valor was to be decidedly vague about implementation schedules in its agreements — as, indeed, it was.

It actually does not matter, however, whether BellSouth failed to insist upon firm schedules for the reasons just suggested, through inadvertence, or for some totally different reason. Whatever the reason, the fact remains that Section 271(c)(1)(B)(ii) provides a mechanism to assure that BellSouth can use Track B if competitors do not actually begin operations on a schedule that suits BellSouth's needs. That mechanism is to demand an implementation schedule in the interconnection agreements. With a schedule in place, it would be a simple matter to have the state commission certify that an interconnecting carrier has failed to adhere to it, thus opening the way to interLATA authority under Track B.

BellSouth, however, has ignored this means to protect itself in Section 271 proceedings from competitors who are too slow off the mark. For this reason, as noted above, the Commission's only proper response is not, as BellSouth would have it, to grant BellSouth interLATA authority. It is to deny BellSouth's application.

III. BellSouth Has Not Complied With The Reciprocal Compensation Requirement Of The Checklist.

Section 251(b)(5) requires LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252(d)(2) requires such arrangements to provide for the recovery "by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Finally, Section 271(c)(2)(B)(xiii) requires a Bell company's interconnection agreements or statement of generally available terms (SGAT) to include "reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." As a result, unless BellSouth's agreements and/or its SGAT provide compensation to CLECs for all local calls BellSouth sends to them, the competitive checklist is not satisfied.

BellSouth has made clear that there is a class of local calls for which it will not pay any terminating compensation. According to its affiant Mr. Varner, calls that BellSouth's customers make to an Internet service provider (ISP) served by a competing LEC will not be included in calculating terminating compensation.[15] According to Mr. Varner, this position is based on the simple, but profoundly mistaken, view that because the ***communications*** between an end user and the Internet are jurisdictionally interstate, the ***call*** that the end user makes to the local outpost of the Internet — his dial-up ISP — cannot be "local."

There are two key flaws in BellSouth's logic. First, the Commission clearly has the authority to declare that particular classes of interstate communications are to be treated as local for regulatory purposes. In the case of calls to providers of information services, such as ISPs, that has been exactly the Commission's policy for the last fourteen years; it is the basis for the so-called enhanced service provider "exemption" from interstate access charges. As early as 1983, the Commission declared that even though calls to enhanced service providers carried almost exclusively interstate communications, interstate access charges would nevertheless not apply to such calls, and the enhanced service providers (now ISPs) would not be treated as carriers.[16] Instead, ISPs would be treated as end users, and permitted to obtain service out of the LEC's local exchange end user tariffs.[17]

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[15] *See* Affidavit of Alphonso J. Varner on Behalf of BellSouth at ¶ 187.

[16] *See* In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges, *First Report and Order,* CC Docket Nos. 96-282 *et al.*, FCC 97-158 (released May 16, 1997) ("*Access Charge Reform Order*") at ¶¶ 341-48 (discussing history of so-called "exemption" from access charges for enhanced services providers).

[17] *See id.* Of course, the Commission does not lose jurisdiction over these interstate communications simply because it permits them to be provided out of intrastate tariffs in order to advance its own regulatory policies. *See, e.g.,* In the Matter of Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, *Memorandum Opinion and Order,* 7 FCC Rcd 5 (1992) ("*Voice Mail Order*") at ¶12 ("The Commission also has made it clear that it has not ceded jurisdiction over call forwarding when used in interstate communications even if that service is locally tariffed."), *citing* In the Matter of Filing and Review of Open Network Architecture Plans, *Memorandum Opinion and Order,* 4 FCC Rcd 1 (1988) at ¶ 277 & n.628 ("[W]e theoretically could require dual federal/state tariffing or possibly even exclusive federal tariffing ... for such a service.").

In three recent orders, the Commission has confirmed that ISPs should be treated as end users in connection with calls they receive from individuals dialing in to the Internet. In the *Local Competition Order,* the Commission concluded that ISPs were not "telecommunications carriers" who could demand direct interconnection with ILECs under Sections 251 and 252.[18] In the *Universal Service Order,* the Commission expressly distinguished between circuit-switched calls ***to*** ISPs, which were "telecommunications services" and the ISPs' packet-switching and related activities, which were not.[19] And in the *Access Charge Reform Order,* the Commission re-affirmed that ISPs were to be treated as end users, not carriers, for purposes of access charge payments.[20] It would be flatly inconsistent with these orders to treat calls to ISPs as somehow in a no-man's land for purposes of compensation under Sections 251(b)(5) and 252(d)(2).

Second, BellSouth's position confuses two different statutory terms. Section 252(d)(2) calls for compensation to be paid for ***calls*** that originate on one carrier's network and terminate on another's. Although the term "call" is not formally defined in the Communications Act, its use throughout Title II, as well as in common usage, makes absolutely clear that the term refers to a normal, circuit-switched telephone connection established when a telephone number is dialed.[21] By contrast, the term "wire communication" is defined in the Act (47 U.S.C.

[18] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order,* CC Docket Nos. 96-98 and 95-185 (released August 8, 1996) ("*Local Competition Order*") at ¶ 995.

[19] In the Matter of Federal-State Joint Board on Universal Service, *Report and Order,* CC Docket No. 96-45 (released May 8, 1997) ("*Universal Service Order*") at ¶¶ 788-90.

[20] *Access Charge Reform Order* at ¶¶ 341-48.

[21] *See, e.g.,* references to "calls," "called telephone numbers," and similar usage in 47 U.S.C. § 222(d)(3) (discussing telemarketing "calls"); § 223(a)(1) (discussing obscene or harassing "calls," and referring to the "called number"); § 223(b)(1)(A) (discussing obscene or harassing "calls"); § 225(d)(1)(D) (discussing "calls" to Telecommunications Relay Service); § 226, *passim* (repeated discussion of "calls" handled by operator service providers); § 227, *passim,* including, specifically: § 227(a)(1)(A) (referring to "telephone numbers to be called"); § 227(b)(1)(A)
(continued...)

§153(51)), and encompasses the "transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection." This is a much broader concept than that of a telephone "call." The question of the Commission's jurisdiction is determined by the interstate or intrastate character of the ***communication.***[22] The question of whether compensation is due is determined by the local or interexchange nature of the ***call.***[23]

In the case of dial-up ISPs, the "call" terminates when the ISP's modem answers the telephone. The "communication," however, continues into the Internet in packet-switched form. The "call" can therefore be local (both the called and calling party are in the same exchange area) even though the "communication" is interstate in nature.[24]

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[21](...continued)
(referring to "calls" to "telephone lines" and "telephone numbers"); § 227(b)(2)(C) (same); § 227(c)(3)(G) (same); § 227(d)(3)(B) (referring to the "called party's line"); § 228, *passim* (referring to "pay-per-call" services); § 229 (referring to "call-identifying information" to be made available to law enforcement agencies); § 271(c)(2)(B)(vii)(III) (referring to "operator call completion services" as part of competitive checklist); § 271(c)(2)(B)(x) (referring to access to data bases needed for "call routing and completion"); § 271(j) (treating services where the "called party" can choose the interexchange carrier as in-region interLATA services); § 274(i)(7) (defining inbound telemarketing as marketing where the customer initiates "the call"); § 275(d) (referring to "calls received" by alarm service providers); § 276(b)(1)(A) (references to completed "calls" from pay phones).

[22] 47 U.S.C. § 152(a) (interstate and foreign communications under jurisdiction of the Commission), (b) (intrastate communications under jurisdiction of states).

[23] 47 U.S.C. § 252(d)(2). A "call" constitutes a use either of "telephone exchange service" (47 U.S.C. § 153(47)) or of "telephone toll service" (47 U.S.C. § 153(48)). A call which is "telephone exchange service" is a local call. A call which is "telephone toll service" is an interexchange, or toll, call. While Section 252(d)(2) does not literally require a call to be "local" to be subject to reciprocal compensation, Section 251(g)'s general preservation of the pre-1996-Act access charges regime (absent specific Commission action to change it) suggests that interexchange calls remain subject to access charges, not reciprocal compensation, as the Commission has held in the *Local Competition Order.*

[24] As noted above, state versus federal jurisdiction is determined by the end points of the ***communication***, not the end points of a ***call.*** The distinction usually does not matter, because
(continued...)

In this regard, the Commission has expressly recognized that the notion of a "call" involves a dedicated, *i.e.,* circuit-switched, connection between two locations, which would not apply to the packet-switched Internet. For example, as part of its effort to harmonize its traditional use of the term "enhanced services" with the term "information services" as now defined in Title II, the Commission considered whether "adjunct-to-basic" services should be treated as "information services" or as "telecommunications" for purposes of Section 272 of the Act. In concluding that "adjunct-to-basic" services would be classified as "telecommunications," the Commission explained: "Although [adjunct-to-basic] services may fall within the literal reading of the enhanced service definition, they facilitate ***establishment of a basic transmission path*** over which ***a telephone call*** may be completed, without altering the fundamental character of the telephone service."[25] It is absolutely clear that the packet-switched data transactions within the Internet never result in the "establishment of a basic transmission path" between the individual end user and any Internet host computer. Instead, the "basic transmission path," and, therefore, the "call," exists only between the end user and the ISP's location.

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[24](...continued)
in most cases — but ***not*** in the case of calls to the Internet — the "call" and the "communication" have the same end points. For this reason, the discussion above is not an attempt to revive the "multiple call" theory of jurisdiction. That theory was once used to support the claim that Feature Group A access service was "really" two calls: an intrastate, local call to the interexchange carrier's nearby switching device and a second, interstate interexchange call to the final destination. When the communication being established is an end-to-end circuit-switched call between two points, it is completely reasonable to treat a chain of linked calls as a single call. Once a clear transmission path has been established from Point A to Point B, and from Point B to Point C, a clear transmission path (barring technical failure) necessarily exists between Points A and C. But when a communication consists of a circuit-switched call to an ISP and then a series of packet-switched transactions with the Internet, there is every reason to recognize the technical reality of the situation, which is that what happens on the "Internet" side of the ISP is vastly different than what happens on the "public switched network" side of the ISP. Indeed, the key function of ISPs is to perform the various complex steps needed to make the necessary translations between the circuit-switched public network and the packet-switched Internet.

[25] In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, *First Report and Order and Further Notice of Proposed Rulemaking,* CC Docket No. 96-149 (released December 24, 1996) ("*Non-Accounting Safeguards Order*") at ¶ 107.

In sum, the Commission's consistent treatment of ISPs as end users, and the clear statutory distinction between "calls" and "communications," establish that the Commission may and should hold without equivocation that calls that individual end users make to their ISPs, within a state-defined local calling area, are subject to reciprocal compensation under Section 252(d)(2) when the individual end user and the ISP are served by different LECs.

If there is any doubt about this matter, it should be resolved in favor of reciprocal compensation, in light of the severe anticompetitive consequences that would flow from accepting BellSouth's claim that calls to ISPs can be excluded from terminating compensation payments. If BellSouth can avoid paying compensation for calls to ISPs, it will inevitably retain (or regain) its monopoly on providing circuit-switched links between the Internet and the public switched network. This will occur because, without compensation for terminating calls to ISPs, the CLECs' only economically sensible choice would be to avoid ISPs as customers and focus their competitive efforts elsewhere. The CLECs will be deprived of significant market opportunities, and competition between CLECs and the Bell companies will be distorted.[26]

ISPs would suffer even greater competitive harm than CLECs. ISPs are attractive customers in that they are heavy users of many telecommunications services, ranging from POTS lines to high-capacity T1 links to more advanced carrier services. If BellSouth can freeze the CLECs out of this market segment, ISPs will pay more for their dial-up lines and other services, and be forced to charge their subscribers higher rates than would exist in a competitive market.

[26] The fact that most ISPs receive mostly incoming traffic is irrelevant. When the ISP disconnects from the ILEC's network and attaches to the CLEC's network, a substantial burden in terms of end office switching is lifted from the ILEC. The ILEC, however, continues to be compensated for performing that switching function when it charges its end users for local exchange service (including usage packages and/or message unit charges that apply to residential and business calls to the Internet). Reciprocal compensation ensures that the CLEC is compensated for the functions it performs. Any ILECs that wish to insulate themselves from the financial consequences of paying terminating compensation for calls their end users make to ISPs served by CLECs may simply negotiate "bill-and-keep" arrangements with those CLECs.

Moreover, the ISPs would be totally dependent upon BellSouth for essential connections to the public switched network, just as BellSouth is attempting to enter the dial-up ISP business.[27]

There is no conceivable reason to deprive ISPs of competitive choices in obtaining circuit-switched connections to the public switched network. To the contrary, Congress has stated that the basic purpose of the Telecommunications Act of 1996 is to establish a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[28] It would make no sense to interpret Sections 251(b)(5) and 252(d)(2) of the Act to ***eliminate*** competition for the business of ISPs. Indeed, such a result would be particularly inappropriate in light of Congress's specific decision that it "is the policy of the United States ... to promote the continued development of the Internet and other interactive computer services and other interactive media."[29] Interpreting Sections 251(b)(5) and 252(d)(2) so as to deprive ISPs of all meaningful competitive choices for their links to the public switched network would directly frustrate that policy. Yet this is the inevitable result of accepting BellSouth's analysis.

In sum, BellSouth's claim that it may refuse to pay CLECs for local calls to ISPs served by those CLECs must be rejected, not only to be consistent with other Commission decisions regarding ISPs, but also because accepting it would guarantee that BellSouth will retain a monopoly on providing ISPs links to the public switched network within its territory. This result would be flatly contrary to the pro-competitive policies of Sections 251 and 252 of Act, as well as the pro-Internet policies of Section 230.

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[27] *See,* data at http://www.bellsouth.net for an overview of BellSouth's effort to enter the Internet access business.

[28] Joint Manager's Statement, S. Conf. Rep. 104-230, 104th Cong., 2d Sess. 1 (1996).

[29] 47 U.S.C. § 230(b)(1).

IV. Conclusion.

BellSouth's application must be rejected because BellSouth has plainly not met the requirements of Track A and cannot legally rely on Track B. Its theory that a lack of competitive effort by firms that have executed interconnection agreements supports a Track B filing suffers from a fatal defect: Congress required Bell companies seeking to assert such claims to (a) negotiate or obtain through arbitration an "implementation schedule" binding on the interconnecting firms and (b) obtain certification from the state commission that the binding implementation schedule has not been complied with. BellSouth's failure to meet these statutory requirements is not excused by its protestations that it is ready to support the efforts of whatever competitors may arise, nor by its claims that the local exchange market in South Carolina is not particularly conducive to competition anyway. To the contrary, these are precisely the types of arguments that should have occurred between BellSouth and the firms with which it must interconnect in the course of negotiating, or arbitrating, a reasonable implementation schedule.

Assuming that the Commission considers BellSouth's application on its merits, that application must still be rejected because BellSouth admits that it will not pay terminating compensation for local calls to ISPs — calls that are properly subject to such compensation under Section 252(d)(2) and all related Commission precedent. For the Commission to accept the conclusion that BellSouth (or other Bell companies) may exclude calls to ISPs from terminating compensation would inevitably and unreasonably lead to a BellSouth monopoly on providing connections between ISPs and the public switched network, a result directly contrary to the policies of the Act.

Respectfully submitted,

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Dated: October 20, 1997

CERTIFICATE OF SERVICE

I, Linda M. Blair, a secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that copies of the foregoing were sent this 20th day of October 1997, via first class mail, postage prepaid, United States mail and via hand delivery, to the following:

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